



Office of Counsel  
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***Contracts 101***  
***Intellectual Property***  
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# Core IP Principles for the DoD Acquisition Community

- **Integrate IP considerations fully into acquisition strategies for advanced technologies in order to protect core DoD interests.**
- **Respect and protect privately developed IP because it is a valuable form of intangible property that is critical to the financial strength of a business.**
- **Resolve issues prior to award by clearly identifying and distinguishing the IP *deliverables from the license rights in those deliverables*.**
- **Negotiate specialized IP provisions whenever the customary deliverables or standard license rights do not adequately balance the interests of the contractor and the Government.**
- **Seek flexible and creative solutions to IP issues, focusing on acquiring only those deliverables and license rights necessary to accomplish the acquisition strategy.**

From: Intellectual Property: Navigating Through Commercial Waters, Oct. 2001, OSD-AT&L



# **What are the things we need to think about when determining the government IP needs?**

- Ability to use the IP after contract expires.
- Ability to use the IP on or with other programs.
- Ability to operate, maintain and upgrade the IP, without being forced to go back to the company that developed the IP.
- Ability to use the IP if the developer of the IP goes out of business (or retires or is otherwise unavailable)
- Are there foreign contractors involved? Foreign IP?
- Example: Consider a contract to develop and provide training manuals, or graphical/pictorial works.



## **DISTINGUISHING INTELLECTUAL PROPERTY DELIVERABLES FROM LICENSE RIGHTS**

- “IP deliverables” refers to the contractual obligation to deliver IP having a predetermined content and format. The Government may own the delivered physical medium on which the IP resides, but it generally will not own the IP rights.
- “License rights” refers to the Government’s ability to use, reproduce, modify, and release the delivered IP. These two concepts are integrally related. Using creative flexibility in both areas will result in a win-win agreement.



# Practice Tips

Build a good working relationship between the acquisition organization and the supporting contracting organization **before** beginning work on any document that defines IP

- The contracting organization must fully understand the needs and desires of the acquisition organization
- The acquisition organization must appreciate the laws and regulations that constrain the contracting organization



# IP Questions

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